

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY UTILITIES COMPANY

COMPLAINANT

vs.

HENDERSON-UNION RURAL ELECTRIC
COOPERATIVE CORPORATION

DEFENDANT

CASE NO. 89-349

O R D E R

On June 11, 1990, Defendant, Henderson-Union Rural Electric Cooperative Corporation ("Henderson-Union") petitioned the Commission for rehearing of the Commission's Order in the above-styled matter dated May 23, 1990. On June 26, 1990, Kentucky Utilities ("KU") filed its response to the Defendant's petition for rehearing. Henderson-Union filed a reply to KU's response on June 28, 1990. The Order of the Commission found that KU was the appropriate retail electric supplier to serve Pyro Mining Company's Baker mining site in Webster County, Kentucky. In support of its petition, Henderson-Union advances two arguments:

- (1) That the Commission acted unreasonably in considering the location of the underground mining activities in determining whether Baker mining site was located in adjacent certified territories.

(2) Pyro Mining has significantly changed its mining plans and will no longer locate a power drop at the Baker mining site but will instead locate it at the Palco mining site which is located approximately 4,000 feet from the terminus of KU's 69 KV line.

KU requests that the Commission determine that Henderson-Union's petition for rehearing is outside the time frame since KU or its counsel allegedly were not served with notice of the petition for rehearing as required by Commission Regulation. KU also argues that the Commission's Order is lawful in considering the location of underground mining activities in determining whether or not a new electric consuming facility is located in adjacent certified territories. Lastly, KU asserts that Pyro has already installed a power drop at the new mine site on the Poplar Ridge site and provided the signed contract for electric service entered into between KU and Pyro Mining Company dated June 4, 1990.

The Commission lawfully considered in part the underground mining activity in making its decision as to whether the new electric consuming facilities were located in two adjacent certified territories which mandates the application of the criteria set forth in KRS 278.017(3). The Commission rejects Henderson-Union's arguments that the Commission should not consider the underground coal reserves when determining the location of facilities. Since the Commission finds that it is appropriate to consider the underground mining reserve to be part

of the facility to be served, the fact that the coal reserves in one territory may be miniscule as opposed to the amount in another territory is not relevant. The Commission is by statute required to determine whether or not the new electric consuming facilities is located in two adjacent certified territories -- the amount of the facility that actually lies in the respective territories is not germane to that determination. Accordingly, the Commission's determination that Pyro's facilities located at the Poplar Ridge mining site was a new electric consuming facility located in two adjacent certified territories and the Commission's application of KRS 278.017(3) in the determination of which retail electric supplier should serve is lawful.

Henderson-Union's petition additionally argues that the Commission should reconsider its decision because Pyro's plans have substantially changed since the time of the hearing in this matter on April 12, 1990. By affidavit of Mr. Harman, Henderson-Union states that "Pyro has abandoned its plan to have a power drop at the Baker site and Pyro now intends to run the additional power overground to make a drop at the Palco site." Henderson-Union alleges that the Palco site is 4,000 feet inside the Henderson-Union boundary and is 4,000 feet from the terminus of KU's existing 69 KV line as opposed to 500 feet if the power drop is located where it was described to be at the hearing. Henderson-Union contends that had this information been available at the time of the hearing, the Commission would have ordered Henderson-Union to provide the additional power rather than KU.

In KU's response it attaches a copy of the contract between KU and Pyro dated June 4, 1990 which provides that service shall be provided at the "new mine opening on Highway 270." KU argues that Pyro has obviously not abandoned its plan to take power for the new mine opening at the Poplar Ridge site.

The Commission ordered that KU shall serve Pyro facilities located at the Poplar Ridge mining site in Webster County, Kentucky. This Order was based upon the findings in the Commission's Order on page 9 which stated:

KU already has adequate facilities near the site. Henderson-Union, in contrast, must construct 1.5 miles of 69 KV line to provide service to the site. KU was first to furnish retail service to the site. Its existing lines are adequate to meet Pyro's needs whereas Henderson-Union's are not. Furthermore, the needless duplication of distribution facilities and the unnecessary encumbering of the landscape of the Commonwealth will be avoided by permitting KU to provide retail electric service.

Henderson-Union fails to present persuasive evidence that Pyro has, in fact, changed the location of its power drop.

However, assuming arguendo that the power drop is, in fact, relocated to the Palco site, the Commission's above-stated findings of fact still hold true. Henderson-Union fails to provide evidence of how the new location lessens the length of the 69 KV line it would have to construct to serve the site. Henderson-Union has failed to refute the fact that it still must construct a 69 KV line a substantial distance to furnish retail service to the site. Therefore, even if the power drop has been relocated as Henderson-Union alleges, the record still supports the Commission's finding that KU's existing lines are more

adequate to meet Pyro's needs than Henderson-Union's. Concomitantly, allowing KU to serve avoids needless duplication of distribution facilities. Accordingly, the Commission's Order which applies the criteria in KRS 278.017(3) in making its determination that KU should serve and the findings of fact therein remain valid taking into consideration the alleged change in location of the power drop. Therefore, the petition for rehearing should be denied. Based upon the above determinations it is unnecessary to address KU's argument that Henderson-Union's petition is untimely.

IT IS THEREFORE ORDERED that Henderson-Union's petition for rehearing is hereby denied.

Done at Frankfort, Kentucky, this 2nd day of July, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:



Executive Director

DISSENTING OPINION OF COMMISSIONER JAMES THORNBERRY
TO ORDER IN CASE NO. 89-349

In arriving at its decision of May 23, 1990, this Commission focused extensively on the proposed mining operations emanating from the Baker Mining Site. This Commission was led to believe that the power drop at Baker Mining Site would serve Pyro's mining operations to the northeast and southeast of that site. The evidence accompanying Henderson-Union's petition for rehearing shows that this is no longer the case.

The drastic changes in Pyro's proposed mining operations suggested in Henderson-Union's petition for rehearing require the Commission to grant that petition, to hold a hearing on Pyro's newly proposed mining operations, and then, in light of these new plans, reapply the criteria of KRS 278.017(3) to the facts. Rehearing is also necessary to ensure that neither KU nor Pyro have manipulated the proceedings of this Commission or withheld vital information from it. By failing to grant rehearing, this Commission does a disservice not only to the parties but to the people of the Commonwealth.

Dated this 2nd day of July, 1990.


James Thornberry, Commissioner